



Department
for Education

Devolution of adult education functions: the transition year

Memorandum of understanding

August 2018

Contents

Introduction	3
Context	3
Background	3
1. Purpose	5
2. Key objective	5
3. Principles of collaboration and the parties' responsibilities	5
4. Mayoral Combined Authority obligations	6
5. Department for Education obligations	8
6. Costs and liabilities	8
7. Confidentiality	9
8. Data protection and record keeping	9
9. Assurance and audit	9
10. Start dates and duration	10
11. Review and amendments	10
12. Communications	10
13. Escalation procedure	10
14. Miscellaneous	10
15. Status	11
16. Governing law and jurisdiction	11
Signed	11
Appendix A: Nolan Principles	12
Appendix B: sample delivery agreement	13

Introduction

THIS MEMORANDUM OF UNDERSTANDING (which expression shall include the Appendices) ("**MoU**") is dated [xx month] 2018

Between:

1. **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DfE**")
2. [xxxxxx] **Mayoral Combined Authority ("**MCA**")** of [xx address]

Each a "Party", together the "Parties".

DfE includes the Education and Skills Funding Agency (ESFA) at all points throughout this MoU. ESFA is an executive agency of DfE and is responsible for funding education and skills for children, young people and adults.

Context

This MOU supports a new collaborative working relationship between the MCA and DfE. Both parties are committed to agreeing an approach that will cover not just the national strategic priorities for residents funded by the AEB, but enable the MCA to have real influence over the wider skills system. This MOU will support joint decision-making and accountability, increase transparency, minimise costs and bureaucracy and form part of the Governance arrangements operating to support devolution of the AEB.

Background

- A. The Secretary of State for Education has certain functions related to adult further education and the associated Adult Education Budget (AEB). The Government intends to lay orders before Parliament in 2018, which would provide for their transfer or concurrent exercise by the MCAs ('full devolution'). The Government intends those orders to have effect with respect to the Academic Year 2019/20 (AY 2019/20) and each year thereafter.
- B. The MCA has determined that, for a transitional year, 2018/19, it wishes to assume a role in influencing adult further education and training provision in its area, to support delivery of the local strategic skills plan (the transition option) and work towards full devolution from the start of 2019/20. DfE encourages dialogue between MCA and providers delivering to its residents, to help shape future delivery plans, support quality improvement and meet local skills priorities.
- C. The transition option is designed to support local engagement on matters relating to adult further education delivery in the MCA area, with an influencing role in determining the mix and balance of provision and/or funding allocations. This will

therefore be a stepping-stone towards establishing MCA control through full devolution in AY 2019/20. This transitional year will provide the opportunity for MCA and DfE to build strategic relationships, working across DfE policy and operational areas. It will enable the MCA, **where it considers this appropriate**, to shadow-run its proposed funding policies, monitoring systems and performance management processes with a sample of providers (to be agreed locally) to ensure its arrangements for AY 2019/20 are suitably robust. The transitional year is an opportunity for the DfE to build a stronger relationship with each MCA, covering all areas of skills policy, so that DfE, ESFA and the MCA can work closely together to support skills delivery in each MCA area. This strong broad partnership will underpin the joint work to ensure that the AEB is spent effectively. It is important that existing close working, building strong relationships continues.

1. Purpose

The purpose of this MoU is to establish the responsibilities of the Parties in respect of:

- a) AY 2018/19 AEB planning, programme delivery and data analysis (taking into account emerging information about activity undertaken by MCA residents in AEB-funded provision during the (current) 2017/18 academic year);
- b) transition activity and planning for full devolution of the AEB in AY 2019/20; and
- c) general principles for governance, data sharing, accountability, cooperation and management of the relationships between the Parties.

2. Key objective

The Key Objective is to enable effective engagement between the Parties in respect of the Background paragraphs (A) to (C) above, including coordinated local engagement with providers of adult education and training (“Providers”). It will set out the parameters for engagement (roles and responsibilities) and the respective commitments of the Parties.

3. Principles of collaboration and the parties’ responsibilities

The Parties agree to adopt the following principles (“**Principles**”) in relation to the Key Objective:

- a) to work collaboratively at a strategic level, as well as to learn, develop and seek to achieve the full potential of the MCA influencing role locally, taking, where possible, complementary and consistent approaches, including in supporting quality improvement and provider financial sustainability;
- b) to share information, experience, materials and skills to learn from each other, develop effective working practices and to work collaboratively to identify solutions, eliminate duplication, mitigate risks and minimise costs;
- c) to adhere to all statutory requirements and best practice (including the seven principles of public life (the Nolan Principles) set out in Appendix A).
- d) to comply with applicable laws and standards including data protection and freedom of information legislation;
- e) to act professionally and without undue delay;
- f) consult early on any issues that may have implications for either Party, or that could impact on the financial viability of colleges or other training providers;

- g) to ensure sufficient and appropriately qualified employees and other necessary resources are available and (in the case of employees) authorised to fulfil the responsibilities set out in this MoU;
- h) to act in good faith to support achievement of the Key Objective and compliance with these Principles;
- i) to set out joint governance arrangements to underpin these principles;
- j) to be accountable to each other for performance of their respective roles and responsibilities as they are set out in this MoU; and
- k) Communicate with stakeholders effectively and consistently wherever possible, using the same information and messages.

4. Mayoral Combined Authority obligations

The MCA will:

- a) use any implementation funding provided by DfE under a Section 31 demand led grant arrangement to build capacity for managing the devolved AEB from 2019/20 onwards, in line with activities outlined in the MCA's business cases for financial year 2018-19 (April 2018 to March 2019) and the period up to the end of the academic year 2018/19 (April 2019 to July 2019), and provide use of funds statements, confirming the grant received and spent was used wholly for the purposes for which it was given, at the end of financial year 2018-19 (i.e. in April 2019) and at the end of academic year 2018/19 (i.e. in August 2019), signed by its Accounting Officer;
- b) consult local stakeholders, including Providers affected by their commissioning proposals, in review of its local skills priorities and plans;
- c) build in AEB-specific activity to its wider skills plan;
- d) consult Providers and DfE on the development of any new funding and performance management rules and funding rates and formula approaches to be deployed, in time for AY 2019/20, taking into account Provider requirement for an appropriate lead-in time for business planning purposes;
- e) seek to agree learning provision delivery plans with Providers, bringing a focus to identified local skills priorities;
- f) in accordance with MCA and DfE timelines, work together with DfE to jointly consider proposed individual provider funding for AY 2019/20, including allocation methodologies, how and when payments will be made to Providers and for what provision, as well as jointly assessing possible cumulative impact on provider financial viability;
- g) jointly consider, with DfE, across the range of post-16 provider funding and to an agreed timeline, the cumulative effect of local decisions and national policy and

funding arrangements on provider financial viability, including from any in-year changes to provider funding;

- h) in seeking any variation to a nationally-set provider funding allocation in 2018/19, consult with the relevant provider. Any potential variation must be agreed between the MCA and provider, before being proposed to DfE. For any variation to take place, the MCA must ensure DfE receives a copy of the proposal (a sample is included at Appendix B) signed by MCA and the relevant Provider, by no later than 27 April 2018. This will enable DfE to consider the proposed variation and, if appropriate, to adjust the 2018/19 provider funding allocation, in accordance with its normal business cycle. Any provider funding allocation increases must be offset by reductions in provider funding elsewhere within the MCA area, such that the overall effect is cost-neutral;
- i) in the event that a variation to provider funding is proposed by MCA and Provider following the issue of final funding allocations for 2018/19 by DfE (ESFA), or at a point in time where it is too late to amend such allocations, the route to achieving change in provision and/or funding would be through sub-contracting arrangements, as set out in the current funding and performance management rules;
- j) in considering possible variations to 2018/19 provider funding allocations, work together with DfE and take into account that (a) only grant-funded providers are in-scope; (b) those providers must not be in intervention, declining or weakening financial health, under an ESFA Notice or implementing area review outcomes; and (c) overall changes must be cost-neutral for the providers in scope in the MCA area. Note that this does not preclude the MCA from having conversations with all AEB-funded providers delivering to their residents, it merely restricts with which providers the MCA can propose a variation to the 2018/19 allocation.
- k) to act in accordance with any data sharing agreements established through the Data Governance Group;
- l) if undertaking a variation to allocation, review any in-year under-performance against any MCA delivery plans with Providers and share with DfE any emerging issues;
- m) attend meetings with DfE to consider progress against this MoU and next steps, as well as DfE (ESFA) local intervention team activity (either Party can convene these meetings), on dates to be agreed;
- n) engage in tri-partite dialogue with DfE and Providers, in readiness for **AY 2019/20**, the first year of AEB budget devolution, seeking to align policy and combined authority commissioning strategies for devolved AEB with non-devolved post-16 programmes and funding (e.g. in seeking to build progression pathways for AEB-funded learners);
- o) the MCA will work with DfE to ensure that for 2019/20 appropriate commissioning, funding and assurance arrangements are in place to support AEB provision;

- p) work jointly with DfE, through its Skills Advisory Panel (SAP) programme (where appropriate) to compile skills strategies and plans; and
- q) work with DfE in the assessment of MCA readiness for full devolution.

5. Department for Education obligations

The DfE will:

- a) calculate, and share the methodology for calculating, transition year, illustrative budgets for AY 2018/19 and indicative budgets for AY 2019/20 to assist the MCA in planning for full devolution, and notify these budgets to the MCA as early as possible in 2018;
- b) confirm final AY 2019/20 AEB allocation to the MCA in early 2019;
- c) subject to receipt of a satisfactory business case and evidence of match funding from the MCA, assess the need for DfE funding for the period April 2018 to July 2019, through a Section 31 demand led grant payment, to support the MCA in preparing for implementation of full devolution in AY 2019/20. Such funding to be agreed separately between the Parties;
- d) continue to host the national ILR data collection system and share any data and other information agreed under any data sharing agreement, with the MCA;
- e) engage the MCA in national policy development and implementation discussions;
- f) support the MCA during the 2018/19 year as it develops its own systems, supporting MCA efforts in communicating with providers ahead of full devolution of the AEB in AY 2019/20;
- g) attend meetings with the MCA to consider progress against this MoU and next steps (either Party can convene these meetings), on dates to be agreed;
- h) work together with the MCA in understanding the impact of all commissioning decisions by the Parties and establish timely exchanges of information to enable both DfE and MCA to take account of the cumulative effect on a Provider's financial viability; and
- i) jointly with the MCA and Ofsted, support quality improvement across post-16 provision in the MCA area.

6. Costs and liabilities

6.1 Except as otherwise provided for in this MoU, the Parties will each bear their own costs and expenses incurred in complying with their obligations under this MoU.

6.2 Each of the Parties shall remain liable for any losses or liabilities incurred due to their own or their employees' actions and no Party intends that another Party shall be liable for any loss it suffers as a result of this MoU.

7. Confidentiality

7.1 Each of the Parties understands and acknowledges that it may receive or become aware of Confidential Information belonging to one or more of the other Parties whether in the course of operating this MoU or otherwise.

7.2 Each Party shall treat the other Party's Confidential Information as confidential and safeguard it accordingly, and not disclose another Party's Confidential Information to any other person (except their employees, agents, and professional advisers to which such disclosure is necessary for the purposes contemplated under this MoU).

7.3 These obligations of confidentiality shall not apply to any Confidential Information to the extent that such Confidential Information is required to be disclosed by a requirement of law placed upon the Party making the disclosure. This includes any requirements for disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or Code of Practice on Access to Government Information.

8. Data protection and record keeping

8.1 The Parties confirm that they shall comply with their responsibilities under the Data Protection Act 1998 and any subsequent legislation. To the extent a Party is processing another Party's data (for example, where the MCA has access to learner records provided by DfE) each Party will safeguard such data and treat it in the same manner as it would treat its own data to comply with the requirements of the Data Protection Act 1998.

8.2 The MCA will permit access to any records, data and information collected by it in relation to DfE-funded programmes ("Records") to DfE and any persons, including other crown bodies and auditors (including third party auditors acting on DfE's instructions) to inspect such Records, data and information on reasonable notice. This may include taking copies of such Records and sharing the same with other government agencies. The MCA will ensure that DfE (and those acting on its behalf) can use those Records for such purposes and the MCA shall secure all necessary consents to share any personal data (including sensitive personal data) comprised in such Records, with DfE.

8.3 The Parties will aim to jointly agree a set of reliable, accessible and timely data which will be made available by DfE under any data sharing agreement.

9. Assurance and audit

MCAs should where possible look to place reliance upon the audit and assurance work undertaken by DfE and providers in the transitional year. This reduces the administrative burden on providers enabling a consistent approach to performance management. The MCA audit function may work alongside the DfE/ESFA assurance teams, in preparation for 2019/20.

10. Start dates and duration

This MoU will commence on the date of this agreement and will continue until the final records have been exchanged relating to the AY 2018/19. The Parties may agree in writing to vary or extend the term of this MoU and either Party may terminate this MoU at any time by giving 3 months' written notice to the other Party.

11. Review and amendments

11.1 This MoU will be reviewed one year after the date of commencement, at the time of agreeing any extension or termination and upon reaching the end date.

11.2 Amendments to this MoU may only be made upon written agreement of both Parties.

12. Communications

All notices or communications under this MoU shall be in writing and sent for the attention of the representatives whose contact details are set out below or to such other person or other address as the relevant Party may give notice to the other Parties:

For DfE: Head of Adult Education Budget Devolution Team, Amanda Davies

For the MCA: [ROLE] [INSERT NAME]

13. Escalation procedure

13.1 Any dispute arising from this MoU which cannot be resolved through discussions between the Parties' representatives detailed in section 12 shall be referred to a Deputy Director of DfE and the MCA delegated decision maker, who shall convene within 30 days of such referral to discuss and seek to resolve the dispute.

13.2 In the event the dispute remains unresolved, the final decision shall rest with the Secretary of State.

14. Miscellaneous

14.1 This MoU does not confer any rights on any third party. Nothing in this MoU shall be interpreted as limiting, superseding, or otherwise affecting any Party's normal operations in carrying out its statutory, regulatory or other duties. This MoU does not limit or restrict any Party from participating in similar activities or arrangements with other entities.

14.2 Nothing in this MoU shall create a partnership or joint venture between the Parties, nor shall this MoU constitute one Party as the agent of another Party nor the employees,

contractors or consultants of one Party as those of another Party. No Party shall have authority to enter into any contract, warranty or representation as to any matter on behalf of another Party. No Party shall be bound by the acts or conduct of another Party.

15. Status

This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.

16. Governing law and jurisdiction

This MoU shall be governed by and construed in accordance with English law.

Signed

This MoU is signed and agreed on the date stated at the beginning of this MoU:

Signed for and on behalf of **THE
SECRETARY OF STATE FOR
EDUCATION:**

Signed for and on behalf of **[INSERT
NAME OF MCA]:**

Name:

Name:

Position

Position

Date

Date

Appendix A: Nolan Principles

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B: sample delivery agreement

This agreement confirms that the MCA and provider are proposing to DfE the variations set out below.

Combined
Authority

Signature

Provider

Signature

Date

Provider Information

ESFA Original 2018/19 Allocation (What was the value of the total AEB allocation)	
Outturn against allocation in 2016/17 as reported in final claim (%)	
Statutory Entitlements (What proportion of funding was utilised in 2016/17 to support learners with a statutory entitlement)	
Delivery in CA locality (What proportion of funding was delivered to residents in the devolution area in 2016/17.) This is the only funding which can be varied by the CA.	

Proposed Changes

Proposed decrease (amount and rationale to support this – where is the amount of money recovered to be reallocated?)	
Proposed increase (amount and rationale to support this – where is the increase in allocation being sourced from)	
Proposed changes in terms of delivery (what is to be changed in terms of programmes delivered and the rationale to support this)	

Other considerations

Strategic Skills Plan (brief description of how the proposed changes align to the strategic skills and wider CA plans)	
Area review recommendations (confirmation that any appropriate recommendations from area review have been considered)	
Any other comments	



Department
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